

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

THOMAS A. HARTSWICK	§	
	§	
VS.	§	CIVIL ACTION NO. 5:20-cv-635
	§	
COSTCO WHOLESALE CORPORATION	§	
d/b/a COSTCO	§	

**DEFENDANT’S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION:

COSTCO WHOLESALE CORPORATION d/b/a COSTCO (COSTCO), files this Notice  
of Removal under 28 U.S.C. §§ 1441, 1446, and 1332, and shows the following:

**I.**  
**INTRODUCTION**

1.1 On March 24, 2020, Plaintiff THOMAS A. HARTSWICK filed a personal injury lawsuit in the 131st District Court of Bexar County, Texas, against Defendant Costco in Cause No. 2019CI06094. Plaintiff alleges that he suffered injuries because of sitting on a display at Costco which allegedly collapsed and resulted in his fall at the Costco warehouse located at 5611 UTSA Boulevard, San Antonio, Bexar County, Texas, 78249. *See Exhibit A, Plaintiff’s Original Petition*, Paragraphs 5.1, 5.2, and 5.3. Plaintiff’s petition alleges “serious personal injury to her [sic] body generally. *Id.* at Paragraph 6.1. His damage claims include past and future medical expenses, past and future physical pain, past and future mental anguish, past and future physical impairment, past and future disfigurement, past lost wages or wage earning capacity, and lost earning capacity or lost wages in the future. *Id.* at Paragraphs 6.1.1 through 6.1.13.

1.2 The state court action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. §1332, and is one which may be removed to this Court by Defendant

pursuant to the provisions of 28 U.S.C. §1441, in that it is a civil action wherein the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

1.3 Service of Citation of Plaintiff's Original Petition on Defendant Costco was executed on April 27, 2020. *See Exhibit B, Process Server Delivery Details.*

1.4 Defendant Costco filed their Original Answer in the state court action on May 14, 2020. *See Exhibit C, Defendant Costco Wholesale Corporation's Original Answer to Plaintiff's Original Petition.*

1.5 Defendant Costco filed their Demand for Jury Trial in the state court action on May 14, 2020. *See Exhibit D, Defendant's Demand for Jury Trial; Exhibit E, State Court Docket Sheet.*

## **II. THE PARTIES**

2.1 Plaintiff is a Texas citizen, with his residence in Bexar County, Texas, at the time this action commenced. *See Exhibit A, Plaintiff's Original Petition, Paragraph 2.1.*

2.2 Defendant Costco is a Washington Corporation with its principal place of business in the State of Washington. *See Exhibit F, Franchise Tax Account Status, Office of Texas Comptroller.*

## **III. PROCEDURAL REQUIREMENTS FOR REMOVAL**

3.1 Removal is timely, as this notice is filed within thirty (30) days of service on Defendant of summons and Plaintiff's Original Petition on April 27, 2020. 28 U.S.C. §1446(b)(1).

3.2 Upon filing of this Notice of Removal, written notice of the filing is being given by Defendant Costco to Plaintiff and Plaintiff's counsel as required by law. A copy of this Notice is also being filed with the Clerk of the Court in Bexar County, Texas, where the cause was originally

filed. *See Exhibit G, Defendant's Notice of Filing of Notice of Removal.* A copy of all processes, pleadings, and orders have been filed separately with this Court pursuant to 28 U.S.C. §1446(a).

**IV.**  
**VENUE**

4.1 Venue in this district is proper because the Western District of Texas, San Antonio Division, includes Bexar County where the alleged incident occurred and where the original lawsuit is pending. *See Exhibit A, Plaintiff's Original Petition*, Paragraph 4.1; 28 U.S.C. §1441(a).

**V.**  
**JURISDICTIONAL BASIS FOR REMOVAL**

5.1 Removal is proper pursuant to 28 U.S.C. §1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

5.2 Defendant Costco is not a citizen or resident of the state of Texas.

5.3 Defendant Costco is a Washington Corporation with its principal place of business in the State of Washington.

5.4 The injuries Plaintiff alleges in his Original Petition are substantial, including her [sic] body generally. *See supra, at §1.1.* Plaintiff pleaded extensive damages, including past and future elements of each damage category. *See id.* Thus, it is clear on the face of his petition that the amount in controversy in this case exceeds \$75,000. *See Exhibit A, Plaintiff's Original Petition*, Paragraph 6.2; 28 U.S.C. §1446(c)(2).

**VI.**  
**JURY DEMAND**

6.1 Defendant Costco filed a jury demand in their state court Original Answer. Defendant Costco hereby asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

**VII.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant Costco Wholesale Corporation d/b/a Costco prays that this Notice of Removal be deemed sufficient and that proceedings attached hereto be removed from the 131st District Court of Bexar County, Texas, to the docket of this Honorable Court.

Dated: May 27, 2020

Respectfully submitted,

SHELTON & VALADEZ, P.C.  
600 Navarro, Suite 500  
San Antonio, Texas 78205  
rvaladez@shelton-valadez.com  
kwrubel@shelton-valadez.com  
Telephone: (210) 349-0515  
Telecopier: (210) 349-3666

By: *Kenney J. Wrubel*  
ROBERT A. VALADEZ  
State Bar No. 20421845  
KENNEY J. WRUBEL  
State Bar No. 24044010

COUNSEL FOR DEFENDANT  
COSTCO WHOLESALE CORPORATION  
d/b/a COSTCO

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing was served by certified mail return receipt requested in accordance with Federal Rules of Civil Procedure on the 27th day of May 2020, to:

**VIA ECF**

Manuel C. Maltos  
MALTOS LAW FIRM, PLLC  
8600 Wurzbach Road, Suite 702  
San Antonio, Texas 78240  
manuel@maltoslaw.com  
denise@maltoslaw.com

German Cantu  
CANTU LAW FIRM, PLLC  
8600 Wurzbach Road, Suite 702  
San Antonio, Texas  
gcantu@thecantulawfirm.com



ROBERT A. VALADEZ  
KENNEY J. WRUBEL

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**INDEX OF DOCUMENTS FILED WITH REMOVAL**

- A. Plaintiff's Original Petition
- B. Process Server Delivery Details
- C. Defendant Costco Wholesale Corporation's Original Answer to Plaintiff's Original Petition
- D. Defendant's Demand for Jury Trial
- E. State Court Docket Sheet.
- F. Franchise Tax Account Status, Office of Texas Comptroller
- G. Defendant's Notice of Filing of Notice of Removal